

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Telephone Number Portability

CC Docket No. 95-116

**VERIZON WIRELESS' REPLY COMMENTS ON INITIAL REGULATORY
FLEXIBILITY ANALYSIS IN TELEPHONE NUMBER PORTABILITY PROCEEDING**

The FCC has received ample information through the initial comments filed in this proceeding to complete its Final Regulatory Flexibility Analysis ("FRFA") and enable intermodal porting to take hold across rural America. The comments make clear that (1) the implementation costs for most "small carriers" are not excessive and can be fairly recovered through the FCC's authorized LNP cost recovery procedures; (2) if there are instances where costs are significant, specific carriers can qualify for relief either through seeking a suspension of the obligation from their state public utility commission (pursuant to 47 USC Section 251(f)(2)) or through seeking a waiver from the FCC; and (3) the interconnection and transport costs do not occur as a result of the *Intermodal LNP Order* and therefore are not properly considered within this RFA.

The Commission should issue a FRFA promptly and direct carriers to provide LNP upon request.

I. The Burden of Implementing LNP is Reasonable for Small Carriers and Safety Valves Exist through State PUC Suspension and FCC Waiver Procedures

The small carriers seeking exemption from offering LNP to their customers bear the burden to demonstrate that provision of this important service imposes an unreasonable economic impact.¹ The initial comments fail to provide such support. At most, the comments assert broad ranges of implementation costs, which serve to prove that many small carriers can provide LNP at a reasonable cost per customer. For example, in Iowa, a rural carrier can implement LNP for a monthly per-customer cost of \$ 0.18;² in Nebraska, a carrier can do so for \$0.67 per month³ and in Missouri, a carrier can complete the implementation for \$0.11 per month.⁴ Moreover, as Verizon Wireless noted in its initial comments,⁵ many companies already upgraded their switches for LNP before the D.C. Circuit Court of Appeals issued its Stay, so those costs have already been incurred and most likely passed along to LEC customers. It would be highly improper to have customers pay for LNP upgrades in switches and then be barred from the competitive benefits that could flow from LNP on grounds that such implementation is costly.

Even had commenting carriers provided specific factual evidence of the alleged burdens of implementing LNP, it would, as the Iowa Utility Board noted, “have been difficult, if not

¹ See 5 U.S.C. § 603. As CTIA points out, the “RFA does not require a particular outcome, nor does it permit the Commission to ignore the policy objectives of the applicable statute.” CTIA comments at 2.

² Iowa Utilities Board (“IUB”) comments, Att. at 9.

³ Nebraska Rural Independent Companies (“Nebraska RIC”) comments at 4.

⁴ Missouri Small Telephone Company Group (“MoSTCG”) comments at 3.

⁵ Verizon Wireless comments at 4.

impossible, for the Commission to issue a ruling such as the *Intermodal LNP Order* that addressed the specific circumstances of so many carriers.”⁶ It is only through company-specific reviews that a regulatory commission can accurately determine the actual burdens of implementing LNP.

Verizon Wireless concurs with the IUB that a procedure already exists that provides small carriers the ability to achieve relief from the intermodal LNP obligations if they can demonstrate unreasonable burdens. Under section 251(f)(2), “two percent carriers” can seek and receive suspensions of their LNP obligations if they can demonstrate to a state commission that the suspension is necessary to avoid a significant adverse economic impact on end users or to avoid imposing a requirement that is unduly economically burdensome. Verizon Wireless participated in the Iowa Utility Board (“IUB”) LNP suspension proceedings, which thoroughly evaluated the costs of the petitioning LECs in that state. As the IUB notes, it considered the burdens on different classes of carriers, and determined that large numbers of carriers should provide LNP after varying periods of suspension.⁷ Unfortunately, the Stay of the *Intermodal LNP Order* pending completion of the FRFA has impeded LNP in much of rural Iowa, notwithstanding the IUB’s specific findings that the burdens on customers and carriers were not significant in many instances. Under the IUB’s Order, some carriers were due to implement LNP on April 6, 2005, but due to the Court’s March 11, 2005 order, most, if not all, of the 147 Iowa petitioners have delayed their plans to implement LNP.⁸

⁶ IUB comments at 6.

⁷ IUB comments at 2-5.

⁸ IUB comments at 4.

Given the existence of a suspension mechanism under section 251(f)(2), the FCC properly focused its analysis in the *Intermodal LNP Order* on the strong statutory obligation that LECs face to provide LNP and the lack of technical or other impediments to providing LNP.⁹ Moreover, the Commission provided a six-month waiver of intermodal porting requirements in order to lessen the burden of compliance on small carriers.¹⁰ The FCC also expressly noted that carriers could avail themselves of the Commission's waiver policies,¹¹ taking steps "to minimize the significant economic impact on small entities."¹²

II. THE RURAL LECS MISSTATE THE IMPACT OF TRANSPORT COSTS ASSOCIATED WITH INTERMODAL LNP

The National Telecommunications Cooperative Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies ("NTCA and OPASTCO") state that the transport issue is the crux of the carriers' concerns about intermodal portability.¹³ Contrary to the claims of the rural LECs, the *Intermodal LNP Order* did not impose new transport costs that constitute a "significant economic impact"¹⁴ on rural LECs. These issues are neither unique to LNP, nor is the law as uncertain as the rural LECs maintain.

As the Nebraska Rural Independent Companies suggest, the transport aspect of the "separate rating and routing situation is the very conundrum that has been pending before the

⁹ *Intermodal LNP Order*, 18 FCC Rcd at 23708-10.

¹⁰ *Id.* at 23712.

¹¹ *Id.*

¹² 5 U.S.C. § 604(a)(5).

¹³ NTCA and OPASTCO at 4.

¹⁴ The Regulatory Flexibility Act requires the FCC to determine whether an action imposes a "significant economic impact" on small entities. *See* 5 U.S.C. § 605(b).

Commission for resolution since 2002.”¹⁵ The Commission made clear in the *Intermodal LNP Order* that this issue is not unique to LNP:

“[C]alls to the ported number will continue to be rated in the same fashion as they were prior to the port. As to routing of calls to ported numbers, it should be no different than if the wireless carrier had assigned the customer a new number rated to that rate center.”¹⁶

The rural LECs therefore have no claim that the *Intermodal LNP Order* imposed any new transport costs on the rural LECs, let alone those resulting in “significant economic impact.”

The rural LECs recycle many of the same arguments that they have made in the LNP proceeding and in response to the *Sprint Petition*. NTCA and OPASTCO claim that it is technically infeasible for two percent carriers to comply with the rating and routing requirements established in the *Intermodal LNP Order*, because if a telephone number is ported to a wireless carrier that has not established interconnection arrangement with the two percent carrier, calls to the ported number cannot be rated in the same fashion as they were prior to the port.¹⁷

The FCC considered these arguments and rejected them, finding that carriers *must* provide local rating of ported calls, and that interconnection arrangements were not a precondition to intermodal porting.¹⁸ Moreover, the FCC has recently provided rural LECs with the right to request negotiation of interconnection arrangements with wireless carriers.¹⁹ To the extent that the rural LECs could have claimed that the *Intermodal LNP Order* imposed any

¹⁵ Nebraska Rural Independent Companies at 6, *citing* Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by ILECs, CC Docket No. 01-92, Public Notice, 17 FCC Rcd 13959 (2002) (“*Sprint Petition*”).

¹⁶ *Intermodal LNP Order*, 18 FCC Rcd at 23708-09, ¶ 28.

¹⁷ *Id.* at 5-6.

¹⁸ *Intermodal LNP Order*, 18 FCC Rcd at 23709, 23711, ¶¶ 28, 34.

¹⁹ Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, *Declaratory Ruling and Report and Order*, 20 FCC Rcd 4855 (2005).

burden on them by imposing LNP without requiring an interconnection arrangement, the FCC now has a rule that affords rural LECs the opportunity to pursue such agreements.²⁰

The basis of the rural LECs' claim that the *Intermodal LNP Order* imposes a significant economic burden on them is that when a rural LEC customer ports to a wireless customer, the rural LEC must pay to transport a land-to-mobile call from the rural LECs' rate center to the newly ported number to the wireless carrier's switch, which in many cases is outside the rural LEC's service area. The rural LECs' solution to this is direct connection or a requirement that wireless carriers pay for all costs associated with the transport of traffic outside the rural carriers' service area boundaries.²¹ For example, Montana Independent Telecommunications Systems states that if the wireless carrier does not have a POI in the LEC calling area, these types of calls are typically routed to the wireless carrier through interexchange carriers ("IXCs") and rated as toll calls.²² The Montana Small Rural Independents claim that indirect interconnection through common trunk groups can result in unidentified ("phantom") traffic, and that the lack of direct connections present technical impediments and adverse economic impacts on rural carriers.²³

Even prior to the *Intermodal LNP Order*, however, Section 251(a)(1) of the Act permitted all telecommunications carriers to interconnect "directly or indirectly" with other carriers.²⁴

²⁰ See 47 C.F.R. § 20.11(f).

²¹ See, e.g., NTCA and OPASTCO at 19; Missouri Small Telephone Company Group at 7 (arguing that if wireless carriers want to have "local" numbers in a small ILECs' exchange area with establishing a point of interconnection ("POI") in that area, then CMRS providers should pay for the transport to and from the local area).

²² Montana Independent Telecommunications Systems at 8-9.

²³ Montana Small Rural Independents at 5.

²⁴ 47 U.S.C. § 251(a)(1).

Wireless carriers do not have duty to interconnect directly with LECs,²⁵ and the Commission's rules prohibit LECs from imposing costs on wireless carriers to originate their calls.²⁶ The Tenth Circuit Court of Appeals also recently held that CMRS providers should not have to bear the expense of LEC-originated traffic,²⁷ and contrary to Montana Independent Telecommunications Systems' argument, the U.S. District Court for the Southern District of Iowa recently issued an opinion holding that indirect interconnection does not convert intra-MTA calls into "long distance" calls.²⁸ With respect to "phantom traffic," the FCC is considering these matters in its current proceeding related to inter-carrier compensation reform.²⁹ None of the economic burdens that are associated with these interconnection issues is a result of the *Intermodal LNP Order*.

III. CONCLUSION

There is no justification to deny rural LEC customers the benefits of competition and consumer protection that flow from LNP — unless specific LECs can demonstrate factually before a state PUC or via an FCC waiver request that the burdens are truly significant. Verizon

²⁵ To the contrary, the Commission's rules permit wireless carriers to dictate to local exchange carriers the type of interconnection between LECs and CMRS carriers. 47 C.F.R. § 20.11(a).

²⁶ 47 C.F.R. § 51.703(b); *see also* *TSR Wireless, LLC v. U S West Communications, Inc.*, 15 FCC Rcd 11166, 11184, ¶ 31 (2000) (LECs must deliver without charge traffic to CMRS providers anywhere in the MTA), *aff'd*, *Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001); *Texcom, Inc. v. Bell Atlantic Corp. Memorandum Opinion and Order*, 16 FCC Rcd 21493, ¶ 6 (2001).

²⁷ *Atlas Telephone v. Oklahoma Corporation Comm'n*, 400 F.3d 1256, 1266 (10th Cir. 2005).

²⁸ *Iowa Network Services, Inc. v. Qwest Corp.*, Order on Initial Briefs and Defendant's Motion For Summary Judgment, Civ. No. 4:02ev-40156, slip op. at 34 (U.S. Dist. Ct. for the Southern District of Iowa, Aug. 17, 2005).

²⁹ Developing a Unified Intercarrier Compensation Regime, *Further Notice of Proposed Rulemaking*, 20 FCC Rcd 4685 (2005).

Wireless urges the FCC to complete the FRFA analysis promptly and to order all carriers that do not qualify for a suspension or waiver to implement and offer intermodal LNP to their customers.

Respectfully submitted,

VERIZON WIRELESS

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line underneath the name.

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